

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appeal No. \_\_\_\_\_

Application Serial No.:	09/334,978	:	Group Art Unit:	3626
		:		
Priority Filing Date:	Nov. 10, 1994	:	Examiner:	N. Pass
		:		
Application Filing Date:	June 17, 1999	:	Inventor:	Webber, et al.
		:		
Application Title:	SYSTEM FOR REAL TIME SHOPPING	:	Docket No.:	CIS1365-012C
		:		

---

**REPLY BRIEF**

---

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer dated February 17, 2006, Appellant submits this Reply Brief in accordance with 37 C.F.R. § 41.41. The Notice of Appeal was filed on September 30, 2005, and the Appeal Brief was filed on November 30, 2005.

Standley Law Group LLP  
495 Metro Place South, Suite 210  
Dublin, Ohio 43017-5319  
Telephone: (614) 792-5555  
Facsimile: (614) 792-5536  
Attorneys for Applicant-Patent Owner

**I. STATUS OF CLAIMS – 37 C.F.R. § 41.37(c)(1)(III)**

The status of the claims is unchanged from the Appeal Brief. Claims 1-9, 11, and 13-26 are pending. Claims 1-9, 11, and 13-26 are rejected. Claims 11 and 13-26 are appealed. Claims 1-9 are canceled. The Examiner approves of the cancellation of claims 1-9 as it reduces or simplifies the issues for appeal. Claims 10 and 12 were canceled in prior amendments.

**II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL- 37 C.F.R. § 41.37(c)(1)(vi)**

The Grounds of Rejection are the same as those set forth in the Appeal Brief and remain unchanged. The Examiner's Answer states that the statement of the grounds of rejection to be reviewed on appeal is correct. Whether claims 11, 13, 18-19, 21 and 26 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki (U.S. Patent No. 5,715,448) in view of Shavit (U.S. Patent No. 4,799,156), King (U.S. Patent No. 5,319,542), and further in view of Hill (U.S. Patent No. 5,528,490)?

### **III. ARGUMENT- 37 C.F.R. § 41.37(c)(1)(vii)**

#### **A. No New Grounds of Rejection Presented in the Examiner's Answer**

The Examiner's Answer does not contain a rejection designated as a new ground of rejection nor does it appear to contain any undesigned new grounds of rejection. Appellant is not required to exercise the options set forth in 37 C.F.R. §§ 41.39(b)(1)-(2) to avoid dismissal of the appeal as to claims subject to a new ground of rejection. Appellant requests that the appeal be maintained by filing of this Reply Brief submitted in accordance with 37 C.R.F. § 41.41. No new amendment or other evidence are submitted with this Reply Brief.

#### **B. Response to Examiner's "Response to Argument"**

Appellant argues once again the patentability of independent claims 11, 18, and 21. The Examiner's Answer repeats arguments of the Final Office Action in which claims 11, 13, 18-19, 21 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki (U.S. Patent No. 5,715,448) in view of Shavit (U.S. Patent No. 4,799,156), King (U.S. Patent No. 5,319,542), and further in view of Hill (U.S. Patent No. 5,528,490). The Examiner further maintains that all claim limitations are taught or suggested by the applied art, that the application was examined as a whole, and that there was a motivation to combine the references other than improper hindsight. Appellant respectfully disagrees that all claim limitations are taught or suggested by the applied art. Appellant has identified in this Reply Brief with reference to the Claim Appendix of Appellant's Appeal Brief the specific claim limitations that are not taught or

suggested. Furthermore, the Hill reference teaches away from the present invention. Therefore, the combination of references is inappropriate and the combination does not render the present invention obvious. Appellant respectfully traverses the arguments and the rejections.

With respect to the Hill reference, the Examiner cites on page 16 as the motivation to combine "... providing the customer with an instantaneous distribution of the latest catalog data available." (Hill, Col. 2: lines 3-5) Appellant respectfully submits that this passage in the Hill reference related to database updates as well as the passages of the other references related to database updates are not updates to assimilated product information transmitted to and displayed at a customer computer in response to a search request for product information submitted by a customer as found in claim 11: lines 31-41, claim 18: lines 29-40, and claim 21: lines 17-31 of Appellant's Appeal Brief. The specific passage of Hill cited by the Examiner as providing a motivation to combine references relates to updating an entire product catalog. By contrast, the present invention is directed to updating assimilated product information displayed to a customer in response to a search request and a request for updates. Updates in the present invention are provided to the customer when a host computer determines that product information at a host database relevant to a search request has been updated. It is respectfully submitted the motivation or teaching in Hill to provide customers with a copy of a current catalog is not relevant to the present invention for updating assimilated product information displayed at a computer. The other cited references have similar deficiencies with regard to updating assimilated product information displayed at a customer computer. General teachings related to updating

databases do not teach or suggest updates to assimilated product information as taught by the present application.

It is the Examiner's position on page 18 the combined cited references of Suzuki, Shavit, King, Hill, Atcheson, and Filepp teach updates to assimilated product information transmitted to a customer computer from a network host computer by a first computer program if the customer computer has submitted a request to receive updates to assimilated product information and a first or second merchant computer transmits updates to product information in a database at the host computer. The Examiner then cites specific passages of Suzuki ("host computer 52 retrieves the integrated database DB 53 in accordance with the retrieval condition in response to the request from the apparel manufacturer 10 or the textile company 20"), Shavit ("the system 50 can confirm available orders immediately"), King ("updating of public cross-industry sector catalogs is accomplished by Suppliers whose catalog data is loaded using one of the following methods ..."), and Hill ("[t]he constant data updating step illustratively includes the steps of determining updated portions of constant data stored in the main computer that are different than the constant data stored in the remote computer ... and replacing portions of constant data received from the main computer") that are believed to teach the claim limitations. The cited passages however, teach or suggest only that data in a database may be updated or provided in response to a request (retrieve integrated database as in Suzuki, update catalog information as in King, or update constant data at a remote computer as in Hill) or that information relevant to a product order may be transmitted (system can confirm available orders as in Shavit). Appellant does not dispute that data in databases can be updated or requested in a variety of ways and that order status

information may be communicated to customers in a variety of ways. However, these teachings do not state explicitly or even suggest that updates to assimilated product information may be transmitted to a customer computer from a network host computer by a first computer program if the customer computer has submitted a request to receive updates to assimilated product information as in claim 11: lines 31-41, claim 18: lines 33-35 and claim 21: lines 17-26 and a first or second merchant computer transmits updates to product information in a database at the host computer as in claim 11: lines 3-8, claim 18: lines 36-40, and claim 21: lines 11-26.

Suzuki Fails to Teach or Suggest "Transmitting Updates to Product Information"

With respect to Appellant's argument that Suzuki fails to teach or suggest transmitting updates to product information as claimed, the Examiner interprets passages in Suzuki related to a database query and renewing of a textile order as updates to product information. The Examiner further states that Appellant has relied on features not expressly recited in the claims. Appellant respectfully disagrees. Each of the independent claims has limitations related to using search parameters to find product information (claim 11: lines 16-21; claim 18: lines 15-19 and claim 21: lines 8-12), assimilating product information related to the search parameters (claim 11: lines 22-26; claim 18: lines 20-24, and claim 21: lines 11-16), providing assimilated product information to a customer (claim 11: lines 27-30; claim 18: lines 25-28; and claim 21: lines 17-19), determining whether product information relevant to the search parameters has changed (claim 11: lines 31-35; claim 18: lines 29-32 and 36-40; and claim 21 lines 24-26), and updating the assimilated product information at the customer computer if

the product information relevant to the search parameters has changed (claim 11: lines 36-41; claim 18: lines 29-32 and 36-40; and claim 21: lines 17-26). The features relating to information about the same products or products searched previously (the same search parameters are used for finding product information and product information that has changed, assimilated product information is based on the information found using the search parameters, and assimilated as well as updated assimilated product information is provided to the customer) are present in the claims. The teachings of Suzuki related to querying a database and providing order status information are irrelevant to the appealed claims. None of the passages from the Suzuki reference provide the asserted teaching with respect to transmission of updated product information. Therefore, the Suzuki reference cannot be combined with other references to reject the claims.

Shavit Fails to Teach "Searching a Database to Select Updated Product Information Relevant to a Search Request" or "Continuous Updates to Product Information Relevant to a Search Request"

With respect to Appellant's argument that Shavit fails to teach or suggest searching a database to select updated product information relevant to a search request or continuous updates to product information relevant to a search request, the Examiner cites passages that explain in detail how a distributor provides various services to its customers. Such limitations are found in claim 11: lines 31-39, claim 18: lines 29-40, and claim 21: lines 17-26. Among the services are various database queries. The Shavit system provides answers or reports in response to inquiries and assists the user if certain information is not known. Shavit, like the other cited references, teaches that



one or more databases may be updated at various times. Finally, Shavit teaches an interactive mode in which order confirmations may be received immediately and communications with other users are facilitated. The general teachings related to database updates, the ability to receive status information quickly, and a continuous flow of information do not relate to a search request or search parameters that are used to find product information as well as updated product information in order to provide continuous updates to product information displayed at a customer computer. None of the cited passages relate to new product information that was located using a search request transmitted previously from a user computer.

Hill Fails to Teach "Determining Whether Updates to Product Information from a First or Second Merchant Computer Have Been Received at a Network Host Computer"

With respect to Appellant's argument that Hill fails to teach determining whether updates to product information from a first or second merchant computer have been received at a network host computer (as in claim 11: lines 31-33; claim 18: lines 36-40; and claim 21: lines 24-26), the Examiner states that it is the entire reference that must be considered. The Examiner further cites a passage related to updating of constant data at a remote computer that is believed to teach determining whether updates to product information have been received at a host computer. The Examiner further states that Appellant's statement that "determining updated portions of data at a main computer that are different than data stored at a remote computer is not the same as determining whether new or updated data has been received at a computer" is unclear because there is no difference between a "computer" and a "remote computer." Appellant is not arguing differences between a computer and a remote computer.

Appellant's position is that there is a difference between determining whether a main computer and remote computer have the same data as in Hill and determining whether updated data has been received by a computer as in the present invention.

Hill is directed to synchronizing databases at computers and, as with the other cited references, updating complete databases so each computer has a complete copy of the database. Hill teaches a "revision status" that is used by the main and remote computers to determine whether an update to the remote computer database is needed. In the present invention, product data from merchant computers is received and stored at a network host computer. The merchant computers update the product data periodically by transmitting additional data irrespective of when customers request product information. If updated information is received at the host computer, it is communicated to the user's computer. Considering the Hill reference in its entirety, the Hill update and synchronization strategy between the remote and main computer using a revision status is entirely different than the present invention which determines whether new product information relevant to a customer's request has been received at a host computer. In the present invention, data is transmitted periodically from the merchant computers to the host computer using various types of network connections described in the patent specification and then communicated to customer computers if it is relevant to the customer's search request. There are no data comparisons between the customer and host computers and data transmissions do not occur only when differences between data at the customer and host computers are detected as taught by Hill.

The Examiner further cites the passage from Hill which states “[t]he catalog system of the present invention automatically determines when it is necessary to log on to the vendor’s computer to retrieve additional data” as evidence that the objective of Hill is the same as in Appellant’s specification. Appellant respectfully disagrees. The fact that Hill performs an automatic log on to obtain the most current information, but only when necessary, indicates that data at remote computers can become stale. Furthermore, Hill’s teaching related to determining when it is necessary to log on to the vendor’s computer teach away from the present invention which allows users to remain connected to a host computer and to obtain continuous updates to product information. In Hill, the update is not performed unless a user at the remote computer “selects a product” from the catalog stored at the remote computer. If the user does not select a product from the database for days or months, no update of the remote computer database occurs. As a result, the product database at the remote computer may be very old compared to the product database at the main computer. Appellant respectfully submits that such an update strategy is not sufficient to ensure that a customer has the most recent product information available and therefore, the teachings of Hill are contrary to the present invention.

The Examiner states that Hill has the same objectives as the present invention and cites a passage believed to support the assertion but fails to explicitly address Appellant’s argument that Hill teaches away from the present invention by disclosing a system and method for “minimizing on-line time.” (Col. 2, lines 35-43.) As stated in Appellant’s brief on pages 18 and 19, Hill notes a number of disadvantages associated with systems that maintain open connections for communications. Hill states that the

disclosed "electronic catalog system of the present invention typically reduces the online time by about 70-80%." (Col. 2, lines 57-59.) Such teachings are contrary to the present invention which allows a customer to receive continuous updates to product information displayed at the customer computer. More importantly, it would not be obvious to combine a reference that teaches minimizing on-line time with the Shavit reference which has been relied upon because it teaches interactive communications and a "continuous flow of transactions." The teachings of Hill and Shavit are inapposite and the Examiner has failed to explain why one of skill in the art would combine them.

#### **VIII. CONCLUSION**

For the foregoing reasons, it is submitted that the Examiner's rejections of claims 11, 18, and 21 are erroneous. It is further submitted that because the rejections of claims 11, 18, and 21, the rejections of claims 12-17 which dependent from claim 11, claims 19 and 20 which depend from claim 18, and claims 22-26 which depend from claim 21 are erroneous. Allowance of the subject application is respectfully requested.

Respectfully submitted,

Date: April 17, 2006

/Carol G. Stovsky/  
Carol G. Stovsky  
Reg. No. 42,171  
Attorney for Applicant  
Standley Law Group LLP  
495 Metro Place South, Suite 210  
Dublin, Ohio 43017-5319  
Telephone: 614-792-5555  
Facsimile: 614-792-5536  
E-mail: [cstovsky@standleyllp.com](mailto:cstovsky@standleyllp.com)